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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,497	02/22/2002	Yoshinori Yuki	04329.2740	9352

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EXAMINER

BELLO, AGUSTIN

ART UNIT	PAPER NUMBER
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2633

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/079,497

Applicant(s)

YUKI ET AL.

Examiner

Agustin Bello

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/11/04, 3/21/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: IDS filed 2/22/02.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-7, 9, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Regarding claims 1-7, 9, and 15, the word "means" is not preceded by the any word(s) in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 14-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The applicant recites a computer program in claims 14-19 which entails non-statutory subject matter.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-13, *as best understood in view of the 35 USC §112 rejection above*, are rejected under 35 U.S.C. 102(e) as being anticipated by Liu (U.S. Patent No. 6,782,198).

Regarding claims 1, 2, 3, 6, 8, 10, and 13, Liu teaches means (Figures 4-7, 9) for setting a current optical path on a route via said clockwise or counterclockwise optical transmission line extending from said start node to said end node, and setting a spare optical path on a route reverse to said current optical path extending from said start node to said end node; means (reference numeral 250, 260 in Figure 4-7, 9) for sharing said spare optical path among said current optical paths having different routes; means (reference numeral 105 in Figure 4-7, 9) for, when a node which terminates said current optical path detects a trouble pertaining to reception of an optical signal, outputting an optical signal to both said current optical path and said spare optical path, sending an alarm signal to an opposite node of said current optical path having the trouble, and switching inputting of optical signals to said spare optical path; and means for (reference numeral 250, 260 in Figure 4-7, 9), when a node which terminates said current optical path detects the alarm signal, outputting an optical signal to both said current optical path and said spare optical path, and switching inputting of optical signals spare optical path.

Regarding claim 4, 11, Liu teaches means (reference numeral 142 in Figure 4-7, 9) for setting said current optical path between nodes by a shortest route.

Regarding claim 5, 12, Liu teaches means (reference numeral 150, 160 in Figure 00) for setting said current optical path and said spare optical path in two ways between nodes.

Regarding claim 7, 9, Liu teaches means (Figures 4-7, 9) for setting a current optical path on a route via said clockwise or counterclockwise optical transmission line extending from said start node to said end node, and setting a spare optical path on a route reverse to said current optical path extending from said start node to said end node, said network manager (reference numeral 146 in Figure 5) including optical path requesting means for requesting at least one node forming an optical path to set an optical path; said node including optical path setting means (reference numeral 220 in Figure 5; reference numeral 250, 260 in Figure 4-7, 9) for setting an optical path between nodes forming an optical path on the basis of the request from said network manager; said optical path requesting means including means (e.g. within reference numeral 146 in Figure 5) for checking whether an optical path can be set, means (reference numeral 105 in Figure 4-7, 9) for determining a node to be requested to set an optical path, and means (reference numeral 105 in Figure 4-7, 9) for checking whether said spare optical path can be shared, said optical path setting means (reference numeral 105 in Figure 4-7, 9) including means for setting an insertion wavelength of an optical path, means for setting a conversion wavelength of an optical path, and means for setting a branching wavelength of an optical path, said means (reference numeral 105 in Figure 4-7, 9) for checking whether said spare optical path can be shared including means determining that said spare optical path can be shared when routes of said current optical paths set between nodes do not overlap, and requesting at least one node to set an optical path so as to form a new spare optical path by sharing an existing spare optical path and said optical path setting means including means for forming a new spare optical path by sharing a wavelength used by an existing spare optical path, when requested by said network manager to form the new spare optical path by sharing the existing spare optical path.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agustin Bello whose telephone number is (571) 272-3026. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571)272-3022. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AB



**AGUSTIN BELLO
PATENT EXAMINER**

2/18/05